

MCINTYRE HARBIN & KING LLP  
ONE MASSACHUSETTS AVENUE N.W., SUITE 330  
WASHINGTON, DC 20001

TEL: 202.408.2779

FAX: 202.408.2777

FAX RECEIVED

FEB 4 2003

GROUP 1600

## FACSIMILE TRANSMITTAL SHEET

TO:  
Examiner Jeanine GoldbergFROM:  
Lawrence HarbinCOMPANY:  
USPTODATE:  
2/4/2003FAX NUMBER:  
703.308/3014TOTAL NO. OF PAGES INCLUDING COVER:  
3

PHONE NUMBER:

SENDER'S REFERENCE NUMBER:

RE:  
Serial No. 09/741,426

YOUR REFERENCE NUMBER:

☐ URGENT    ☐ FOR REVIEW    ☐ PLEASE COMMENT    ☐ PLEASE REPLY    ☐ PLEASE RECYCLE

Request for information and reconsideration.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re PATENT APPLICATION of:

**Akintade Oyedele Dare.**

Serial No.: 09/741,426

Group Art Unit: 1634

Filed: December 21, 2000

Examiners: Goldberg

For: Method and Kit for Quantitating  
Genomic DNA Damage and Repair  
Capacity

February 4, 2003

**REQUEST FOR RECONSIDERATION****AFTER FINAL**

Commissioner of Patent  
and Trademarks  
Washington, D.C. 20231

Sir:

In reply to the final Office Action mailed January 21, 2003, applicant requests reconsideration.

**REMARKS**

The claims stand rejected under 35 USC §103(a) based on, *inter alia*, the Pierce Instructions.

At page 2 of the detailed action, "the examiner determined that the information [Pierce Instructions] was available on February 1997." However, to support a rejection based on prior art, the information must be *publicly* available. See §2128, MPEP. Thus, a proper rejection has not been made.

Further, 37 CFR §1.104(d)(1) provides "[i]f a printed publications are cited, the ... *place of publication, or a place where a copy can be found*, will be given." Based on the